PEGUAM NEGARA MALAYSIA & ANOR v. GO FU SENG & OTHER APPEALS

COURT OF APPEAL, PUTRAJAYA
KAMALUDIN MD SAID JCA
AZIZAH NAWAWI JCA
S NANTHA BALAN JCA
[CIVIL APPEAL NOS: P-01(A)-321-06-2021, P-01(A)-322-06-2021 & W-01(NCVC)(A)-191-04-2021]
24 MAY 2022

Abstract – *Acquisition of citizenship by operation of law requires the fulfilment of the requisite conditions at the time of birth and not thereafter. Subsequent marriage of the parents would not change the birth status of the child as an illegitimate child.*

CONSTITUTIONAL LAW: *Citizenship – Citizenship by operation of law – Illegitimate child – Jus sanguinis – Subsequent legal marriage of illegitimate child's parents – Whether child acquires father's citizenship by descent and qualifies for Malaysian citizenship – Federal Constitution, art. 14(1)(b) & s. 1(a) Part II of Second Schedule*

Three appeals, which shared a common theme, arose against the decisions of the High Court. The respondents, who moved the High Court for the requisite orders in regard to their status as citizens were all born in Malaysia and were illegitimate at the time of their birth. Their fathers were Malaysian citizens while their mothers were foreigners. The parents of the respective respondents subsequently registered their marriage in Malaysia. At the High Court, the respondents were declared to be citizens of Malaysia by operation of law, pursuant to art. 14(1)(b) of the Federal Constitution ('FC') read together with s. 1(a) Part II of the Second Schedule of the FC. The rulings of the High Court were anchored upon the decision in *Madhuvita Janjara Augustin (Suing Through Next Friend, Margeret Louisa Tan) v. Augustin Lourdsamy & Ors* ('*Madhuvita*') where the Court of Appeal ruled that: (i) the subsequent legitimation of the marriage of the illegitimate child's parents altered the status of that child and the child was no longer regarded as illegitimate when seeking citizenship by operation of law; and (ii) upon the legitimation of the parents' marriage, the relevant status of legitimacy of the child should be referenced to the time when the application for citizenship was made and not the illegitimate status at the time of birth. The primary question that emerged in the present appeals were whether, by reason of the subsequent legal marriage of the illegitimate child's parents, the child acquires the father's citizenship by descent (*jus sanguinis*) and therefore, qualifies for Malaysia citizenship under the provisions of the FC.

Held (allowing appeals; setting aside decision of High Court)
Per S Nantha Balan JCA delivering the judgment of the court:

(1) The High Court relied on *Madhuvita* in ruling in favour of the respondents. At the material time, the decision of the Federal Court in *CTEB & Anor v. Ketua Pengarah Pendaftaran Negara, Malaysia & Ors* ('*CTEB*') had not been delivered. When the present matter came before this court, *Madhuvita* was no longer good law and the legal position in relation to an illegitimate child's entitlement to Malaysian citizenship consequent upon the subsequent registration of the marriage between the Malaysian father and non-citizen mother was as stated by the majority decision of the Federal Court in *CTEB*. (paras 7 & 39)

(2) In *CTEB*, the Federal Court, by majority, clearly and unequivocally rejected the proposition established by the Court of Appeal in *Madhuvita* in regard to the role of the order made under the Legitimacy Act 1961 ('Act') or the subsequent legitimation of marriage of the parents for purposes of determining the question whether a child has the requisite qualification to attain citizenship by operation of law. Based on the decision in *CTEB*, it is the legitimate of illegitimate status of the child 'at the time of birth' that matters. Therefore, the subsequent marriage of the illegitimate child's parents or the order of legitimacy under the Act were irrelevant. In such circumstances, the illegitimate child will follow the mother's citizenship. (paras 8, 39 & 41)

(3) Since the Federal Court rejected and overruled *Madhuvita* and since *Madhuvita* was no more a good law, it was clear that the present appeals had to be allowed as this court was bound by *stare decisis ie* the majority in *CTEB*. The majority ruling in *CTEB* applied to the facts pattern present in these appeals. (paras 44 & 47)

Case(s) referred to:

CCH & Anor v. Pendaftar Besar Bagi Kelahiran Dan Kematian, Malaysia [2022] 1 CLJ 1 FC ***(refd)***

Chew Chia Chia & Anor v. Ketua Pendaftaran Kelahiran Dan Kematian Malaysia & Anor [2021] 1 LNS 1371 HC ***(refd)***

CTEB & Anor v. Ketua Pengarah Pendaftaran Negara, Malaysia & Ors [2020] 4 CLJ 597 CA ***(refd)***

CTEB & Anor v. Ketua Pengarah Pendaftaran Negara, Malaysia & Ors [2021] 6 CLJ 471 FC ***(foll)***

Madhuvita Janjara Augustin (Suing Through Next Friend, Margaret Louisa Tan) v. Augustin Lourdsamy & Ors [2018] 4 CLJ 758 CA ***(not foll)***

Pendaftar Besar Kelahiran Dan Kematian, Malaysia v. Pang Wee See & Anor [2017] 7 CLJ 33 CA ***(refd)***

Legislation referred to:
Federal Constitution, arts. 14(1)(b), 15A, 31, Second Schedule Part II, ss. 1(a), (e), Part III, s. 17
Legitimacy Act 1961, ss. 4, 5

(Civil Appeal Nos: P-01(A)-321-06-2021 & P-01(A)-322-06-2021)
For the appellants - Rahazlan Affandi Abdul Rahim; SFC
For the respondent - Andy Ooi Keng Liang; M/s Shariffah, Ooi & Co

(Civil Appeal No: W-01(NCVC)(A)-191-04-2021)
For the appellants - Mohd Izhanudin Alias, SFC & Arina Azmin Ahmad Marzuki; FC
For the respondent - Vigneswaran Raju & Roshini Ramasamy; The Chambers Of Waran

[Editor's note: For the High Court judgment, please see Chew Chia Chia & Anor v. Ketua Pendaftaran Kelahiran Dan Kematian Malaysia & Anor [2021] 1 LNS 1371 (overruled).]

Reported by Najib Tamby

JUDGMENT

S Nantha Balan JCA:

Introduction

[1] The common question in the appeals before us is whether a child who is born in Malaysia, to a father who is a Malaysian citizen and the mother is a non-citizen (foreigner), and where the parents subsequently registered their marriage under the Law Reform (Marriage and Divorce) Act 1976, is a Malaysian citizen by operation of law pursuant on art. 14(1)(b) read together with s. 1(a) Part II of the Second Schedule of the Federal Constitution ("FC"). Hence, the issue is whether by reason of the subsequent legal marriage of the illegitimate child's parents, that child acquires the father's citizenship by descent *(jus sanguinis*) and therefore qualifies for Malaysian citizenship under the provisions of the FC.

[2] There are three appeals before us and they shall be referred to collectively as "the appeals". They are:

(i) Civil Appeal No. P-01(A)-321-06-2021 ("Appeal 321").

(ii) Civil Appeal No. P-01(A)-322-06-2021 ("Appeal 322").

(iii) Civil Appeal No. W-01(NCVC)(A)-191-04-2021 ("Appeal 191").

[3] These appeals are directed at the decision of the High Court in three separate originating summons applications whereby rulings were made in favour of the applicants (respondents before us). The High Courts granted declarations in favour of the respondents who were declared to be citizens of Malaysia by operation of law pursuant to art. 14(1)(b) of the FC read with s. 1(a) Part II, Second Schedule of the FC.

[4] In each of the cases before the High Court, the rulings in favour of the respondents were anchored on the decision of the Court of Appeal in *Madhuvita Janjara Augustin (Suing Through Next Friend, Margaret Louisa Tan) v. Augustin Lourdsamy & Ors* [2018] 4 CLJ 758; [2018] 1 MLJ 307; [2017] 8 AMR 436 (CA) ("*Madhuvita*").

[5] Essentially in *Madhuvita*, the Court of Appeal ruled that the subsequent legitimation of the marriage of the illegitimate child's parents altered the status of that child and that the child is no longer regarded as illegitimate when seeking citizenship by operation of law. According to the Court of Appeal upon the legitimation of the parents' marriage, the relevant status of legitimacy of the child should be referenced to the time when the application for citizenship is made and not the illegitimate status at the time of birth.

[6] However, the *Madhuvita* jurisprudence was short-lived as the correctness of the Court of Appeal's decision was doubted and was overruled by the majority decision of the Federal Court in *CTEB & Anor v. Ketua Pengarah Pendaftaran Negara, Malaysia & Ors* [2021] 6 CLJ 471; [2021] 4 MLJ 236; [2021] 5 AMR 66 (FC) ("*CTEB*").

[7] The Federal Court's decision in *CTEB* was delivered after the High Courts had rendered their decision in each of the applications where are now before us on appeal. It was common ground between all the counsel who appeared before us that in light of the Federal Court's decision in *CTEB*, *Madhuvita* is no longer good law. Thus, when the matter came before us, the legal position in relation to an illegitimate child's entitlement to Malaysian citizenship consequent upon the subsequent registration of the marriage between the Malaysian father and non-citizen mother, was as stated by the majority decision of the Federal Court in *CTEB*.

[8] Thus, it is the illegitimate status at the time of birth which is relevant and the subsequent legitimation of marriage of the parents did not alter the earlier illegitimate status of the child and in such circumstances, the illegitimate child will follow the mother's citizenship. These issues are elaborated further in this judgment. Consequently, in light of the Federal Court's ruling in *CTEB*, we found ourselves bound by the doctrine of *stare decisis* and were compelled to and did allow the appeals.

Appeal 321 (Brief Facts)

[9] In Appeal 321 the facts are as follows. The respondent, Go Fu Seng was born on 19 September 1999 in Malaysia. His biological father, Go Chin Au is a Malaysian citizen. Go Chin Au was married in Indonesia to Mdm Elisabeth Elbertus ("Mdm Elisabeth"), an Indonesian citizen. The marriage in Indonesia took place on 20 March 1999. Mdm Elisabeth later attained permanent resident status in Malaysia.

[10] Go Chin Au and Mdm Elisabeth Elbertus subsequently got married in Malaysia and the marriage was registered in Malaysia on 29 December 1999. On 3 October 2019, Go Fu Seng obtained an order of legitimacy pursuant to s. 4 and s. 5 of the Legitimacy Act 1961 *via* Penang High Court Originating Summons No. PA-3-07-2019 which ordered that:

> Plaintif iaitu Go Fu Seng lelaki yang dilahirkan pada 19hb September, 1999 diisytiharkan sebagai anak sah taraf kepada Go Chin Au (No. KP: 730706-08-6219) dan Elisabeth Elbertus (No. K/P:720725-61-5068) mulai 29.12.1999 ... .

[11] Go Fu Seng then applied for citizenship pursuant to art. 15A of the FC, but there was no response. He then filed an originating summons and sought to obtain an order directing the Ketua Pendaftar Kelahiran dan Kematian Malaysia to register him as a citizen of Malaysia. By an order dated 26 April 2021, the High Court allowed the application and ordered as follows:

> ... bahawa Ketua Pendaftar Kelahiran dan Kematian Malaysia mendaftarkan semula taraf kewarganegaraan Go Fu Seng sebagai warganegara dengan tiada perintah mengenai kos.

Appeal 322 (Brief Facts)

[12] In Appeal 322, the facts were as follows. The respondents, Chew Chia Ching and Chew Chia Chia were born in Malaysia on 30 October 2011 and 3 November 2012 respectively. The respondents are the biological children of Chew Kean Yew ("CKY"). CKY is a Malaysian citizen. The respondents' biological mother is Mdm Zeng Xiaohua ("Mdm Zeng"). Mdm Zeng is a citizen of the Peoples Republic of China. CKY and Mdm Zeng were lawfully married in Malaysia on 5 December 2012. By an order of the High Court *via* Originating Summons No. PA-34-1-04-2019 dated 1 August 2019 made pursuant to s. 4 and s. 5 of the Legitimacy Act 1961, it was declared as follows:

> Plaintif Pertama iaitu Chew Chia Chia dan Plaintif Kedua Chew Chia Ching masing masing kanak-kanak perempuan yang lahir pada 3.11.2012 dan 30.10.2011 disytiharkan sebagai anak-anak sah taraf kepada Chew Kean Yew (No. KP: 750201-07-5387) dan Zheng Xiaohua (No. Passport: E02789214) mulai 5.12.2012.

[13] The respondents applied for citizenship under art. 15A of the FC but there was no response from the Malaysian authorities. The respondents then filed an originating summons and sought the following reliefs:

> 1. Bahawa Ketua Pendaftar Kelahiran dan Kematian Malaysia mendaftarkan semula kelahiran Chew Chia Chia dan Chew Chia Ching sebagai orang yang sah taraf dan menamakan Chew Kean Yew (No. KP: 750201-07-5387) sebagai bapa bilogikal (biological father) dan Zheng Xiaohua (No. Passport: E02789214) sebagai ibu bilogikal (biological mother);

2. Bahawa Ketua Pendaftar Kelahiran dan Kematian Malaysia mendaftarkan semula taraf kewarganegaraan Chew Chia Chia dan Chew Chia Ching sebagai warganegara Malaysia dan

3. Lain-lain perintah yang dianggap wajar, layak dan suai manfaat oleh Mahkamah Yang Mulia ini.

[14] By an order dated 26 April 2021, the High Court allowed the application and ordered as follows:

bahawa Ketua Pendaftar Kelahiran dan Kematian Malaysia mendaftarkan semula taraf kewarganegaraan Chew Chia Chia dan Chew Chia Ching sebagai warganegara Malaysia dengan tiada perintah mengenai kos.

Appeal 191 (Brief Facts)

[15] In Appeal 191, the facts were as follows. The respondent, Mohanasengri was born in Malaysia on 9 November 1992. The respondent's biological father is Mohan Rao a/l S Daliah ("Mr Mohan Rao"), a Malaysian citizen. The respondent's mother is Mdm Navamoney D/O PS Karuppiah ("Mdm Navamoney"). Mdm Navamoney is not a Malaysian citizen. She holds a Certificate of Identity No. S.1478608B of the Republic of Singapore. Mr Mohan Rao's marriage to Mdm Navamoney was subsequently registered in Malaysia on 28 February 2005. The respondent applied for citizenship under art. 15A of the FC but was unsuccessful. The respondent then filed the originating summons ("OS") seeking various relief in regard to her status as a citizen.

[16] The reliefs sought in the OS were as follows:

(a) Suatu Deklarasi bahawa Plaintif adalah anak yang sah kepada Mohan Rao a/l S Daliah (bapa), seorang warganegara Malaysia dan Navamoney d/o P S Karuppiah (ibu) seorang warganegara Singapura;

(b) Plaintif adalah seorang warganegara Malaysia;

(c) Ketua Pendaftar Kelahiran dan Kematian Malaysia mendaftarkan semula Sijil Kelahiran Plaintif dengan taraf warganegara di mana Mohan Rao a/l S Daliah dan Navamoney d/o P S Karuppiah didaftarkan masing-masing sebagai bapa dan ibu yang sah kepada Plaintif;

(d) Plaintif telah bermastautin di Persekutuan atau bahagiannya yang berkaitan untuk tempoh yang pada agregatnya berjumlah tidak kurang daripada sepuluh tahun dalam masa dua belas tahun sebelum pemfailan Saman Pemula ini;

(e) Secara alternatifnya, Plaintif boleh diperakukan sebagai warganegara Malaysia secara naturalisasi;

(f) Kos permohonan ini dan kos sampingannya ditanggung oleh Plaintif;

(g) Kebebasan untuk Plaintif terus memohon kepada Jabatan Pendaftaran Negara Malaysia dan Kementerian Dalam Negeri; dan

(h) Sebarang relif lain yang difikirkan patut dan suai manfaat oleh Mahkamah Yang Mulia ini.

[17] By an order dated 29 March 2021, the High Court allowed the application and granted the following orders:

1. Plaintif adalah anak yang sah kepada Mohan Rao a/l S Daliah (bapa), seorang warganegara Malaysia dan Navamoney d/o P S Karuppiah (ibu) seorang warganegara Singapura;

2. Plaintif adalah seorang warganegara Malaysia;

3. Ketua Pendaftar Kelahiran dan Kematian Malaysia mendaftarkan semula Sijil Kelahiran Plaintif dengan taraf warganegara di mana Mohan Rao a/l S Daliah dan Navamoney d/o P S Karuppiah didaftarkan masing-masing sebagai bapa dan ibu yang sah kepada Plaintif,

4. Kos permohonan ini dan kos sampingannya ditanggung oleh Plaintif.

[18] From the brief (undisputed) facts as narrated above, it is clear that there is a common theme that straddles the three appeals and it is this. The applicants (respondents before us) who moved the High Court for the requisite orders in regard to their status as citizens were all born in Malaysia and were illegitimate at the time of their birth. Their fathers are Malaysian citizens whereas their mothers were foreigners. The parents of the respective applicants who were born illegitimate in Malaysia, subsequently registered their marriage in Malaysia.

[19] In the case of the respondents in Appeal No. 331 and Appeal 332, they had also obtained orders under the Legitimacy Act 1961 to legitimise their birth *via* the statutory provisions. In Appeal 191, there was no order under the Legitimacy Act 1961. However, *via* prayer (a) of the OS, the respondent sought a declaration that she is the lawful child of Mr Mohan Rao and Mdm Navamoney.

The High Court

[20] For Appeals 321 and 322 the learned Judicial Commissioner's grounds for allowing the applications are as follows (see [2021] 1 LNS 1371):

[26] The Applicants say that they are to be considered "legitimate" for the purposes Section 1(a) of Part II (Citizenship by Operation of Law of Persons born of or after Malaysia Day) of the Second Schedule, read with section 17 (Interpretation) of Part III of the Second Schedule, because it is the applicant's current status at the time of application that matters. As they were legitimated soon after their birth, they are, thus, Malaysian citizens by operation of law.

[27] The respondents take a contrary view. They say that it is the applicant's status at the time of birth that matters. The fact that they were subsequently legitimated is irrelevant. They are, thus, not Malaysian citizens by operation of law.

Conflicting Authorities

[28] At the time of hearing of this case, there were two conflicting decisions of the Court of Appeal on this point.

Court of Appeal in *Madhuvita*

[29] The Applicants relied on the Court of Appeal's decision in *Madhuvita Janjara Augustin (Suing Through Next Friend, Margaret Louisa Tan) v. Augustin Lourdsamy & Ors* [2018] 4 CLJ 758 ("*Madhuvita*"). The Judgment was delivered on 02.11.2017 by Justice Mary Lim JCA (as she was then), with Justice Tengku Maimun Tuan Mat JCA (as she was then) and Justice Kamardin Hashim JCA concurring.

[30] On this point, the Court held that it was not the legitimacy status at the time of birth, but at the current status, that mattered. This is what Justice Mary Lim JCA said:

> [59] ... it accords with and comprises the two basic elements for citizenship, *jus soli* and *j'us sanguinis*. Since it is an uncontroverted and an admitted fact by the respondents that Augustine a/l Lourdsamy is the biological father of the appellant, Augustine a/l Lourdsamy is the father and thereby parent of the appellant, and Augustine a/l Lourdsamy is a citizen of Malaysia at the time of the appellant's birth, the terms of art. 14(1)(b) read with s. 1(a) of Part II, Second Schedule are met.
>
> [60] We further find that the fact that Augustine a/l Lourdsamy and Margaret Loisa Tan, the biological parents of the appellant were not married to each other at the time of the appellant's birth does not alter or diminish their capacities as parents of the appellant.
>
> [61] The next consideration is whether the above conclusions are now qualified by the interpretation provisions in Part III of the Second Schedule. It is our respectful view that it is not. To recapitulate, s. 17 provides that in relation to a person who is illegitimate, a reference to that person's father or parent is to be construed as a reference to the person's mother. The reason why we say that s. 17 does not alter the above interpretation is because s. 17 only applies to a person who is illegitimate. Section 17 is drafted in the present tense and it is the prevailing status of legitimacy or illegitimacy which is the relevant consideration.
>
> [62] In that regard, the appellant is clearly, not illegitimate. She is born of parents who were not married to each other at the time of her birth. She is known as a child born out of wedlock. However, she is no longer illegitimate by reason of legitimation by the subsequent marriage of her parents.
>
> [63] The Legitimacy Act 1961 (Act 60) is an Act passed by Parliament to provide for the legitimation of children born out of wedlock. Although we are cautious to ensure that we cannot and

do not use a subsidiary piece of legislation such as Act 60 to interpret the Federal Constitution, we find the reference to Act 60 appropriate in order to determine whether the appellant is illegitimate. The Federal Constitution has not defined the meaning of "illegitimate". The ordinary meaning of illegitimate person would be one who is born out of wedlock or is the issue of parents who were not married to one another at the time of the person's birth.

[64] In the present appeal, the parents of the appellant have married each other since 23 January 2006. Their marriage has been properly solemnised and recognised under s. 3 of Act 60. Where that happens, s. 4 of Act 60 applies. Section 4 reads as follows:

> Subject to section 3, where the parents of an illegitimate person marry or have married one another, whether before or after the prescribed date, the marriage shall, if the father of the illegitimate person was or is at the date of the marriage domiciled in Malaysia, render that person, if living, legitimate from the prescribed date or from the date of the marriage, whichever is the later.

[65] With the clear terms of s. 4, the appellant is rendered legitimate by the subsequent marriage of her parents and that legitimation is from the date of the marriage, that is, from 23 January 2006. From the language and terms of s. 17, the appellant's legitimacy or illegitimacy is questioned at the time of the consideration of the application, and not some other point in time.

[66] As a legitimate person from 23 January 2006, s. 17 does not apply. Section 17 only applies where the person is illegitimate. Since there is legitimation of the appellant, s. 17 does not apply. As a legitimate person, the appellant is entitled to rely on her father's citizenship in which case, the appellant has quite clearly fulfilled the requirements of art. 14(1)(b) read with s. 1(a) of Part II of the Second Schedule.

[67] We must add that the appellant's case does not fall under s. 5 of Act 60 as the appellant was not claiming to be a legitimate child or be legitimated by certain conditions under s. 6. In the case of the appellant, s. 4 applies.

...

Court of Appeal in *Chan Tai Ern*

[31] The respondent relied on the Court of Appeal's decision in *Chan Tai Ern Bermillo & Anor v. Ketua Pengarah Pendaftaran Negara, Malaysia* [2020] 4 CLJ 597 ("*Chan Tai Ern*"). The Judgment was delivered 2 years after Madhuvita on 14.02.2020 by Justice Zaleha Yusof JCA (as she was then), with Justice Abdul Rahman Sebli JCA (as he was then) and Justice Rhodzariah Bujang JCA (as she was then) concurring.

[32] On this same point, the Court this time held that it was the legitimacy status at the time of birth, and not otherwise, that mattered. This is what Justice Zaleha Yusof JCA said:

> [4] Reading the above-cited provisions, we find there will not be any problem if a child is born legitimate to a father who is a Malaysian citizen even if he is born outside the Federation. But in the instant appeal, the child was born out of wedlock. He was illegitimate at the time of his birth. So there comes the problems. Section 17 of Part III of the Second Schedule specifically stipulates that "father" in relation to a person who is illegitimate refers to his mother.
>
> [5] As alluded to earlier, the mother of the first appellant is a citizen of the Republic of the Philippines. Hence one of the qualifications of the citizenship by operation of law that the father, in this case, the mother, is a Malaysian citizen at the time of the first appellant's birth, by a plain reading of the provisions of the FC, has not been fulfilled.
>
> [6] However, learned counsel for the appellants argued that the first appellant's status had been legitimated since his biological parents subsequently married. Hence the first appellant is not illegitimate and reference to "person's father" or "parent" in s. 17 of Part III are not to be construed as reference to his Filipino mother. Learned counsel found support in the provision of ss. 3, [4] and 9 of the Legitimacy Act 1961 (LA 1961); which for ease of reference are reproduced below:
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> Section 3
>
> ...
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> [7] Learned counsel for the appellants contended that the operation of s. 3 of the LA 1961 should be retrospective and once the marriage between the parents has been registered or solemnised, the person is granted the new status of being the legitimate child of their parents. He further contended that by virtue the present tense is used in s. 17 of Part III of the Second Schedule, and since the first appellant's application for his citizenship is made at the present time, after the marriage of his parents, therefore he would be entitled to claim his citizenship.
>
> [8] The learned Senior Federal Counsel (SFC) for the respondent argued that while it is true that an illegitimate child may be legitimated under s. 3 of the LA 1961, the subsequent marriage of his parents would not change the birth status of the child. Section 4 of the LA 1961 deems the child as legitimate from the date of the marriage, hence the marriage does not have the effect of altering the child's birth status which is illegitimate. She further submitted that s. 9 of the LA 1961 only deems as if the illegitimate child had been born legitimate for the purpose of the rights and

obligations of maintenance and support of himself, claims for damages, compensation, allowance, and benefit or otherwise. She found support in *Foo Toon Aik v. Ketua Pendaftar Kelahiran Dan Kematian, Malaysia* [2012] 4 CLJ 613; *Chin Kooi Nah (Suing By Herself And As Next Of Kin To Chin Jia Nee, An Infant) v. Pendaftar Besar Kelahiran Dan Kematian, Malaysia* [2016] 1 CLJ 736 and *Pendaftar Besar Kelahiran Dan Kematian, Malaysia v. Pang Wee See & Anor* [2017] 7 CLJ 33; [2017] 3 MLJ 308.

[9] We had perused the grounds of judgment of the learned High Court Judge. We found the submissions of the parties at the High Court were similar with the submissions before us. We found the learned High Court Judge's reasons in dismissing the originating summons were in line with the submissions put forward by the learned SFC. His Lordship had also referred to the same three cases referred to us by the learned SFC. His Lordship in para. [69] of the grounds of judgment concluded as follows: ... Thus, for purposes of Section 17 Part III of the Second Schedule of the Federal Constitution, Pi's status is the status that obtained at the time of birth, which means that he was illegitimate at that time, and since his mother, Maylene was a non-citizen, he accordingly lacked the requisite qualification for purposes of acquiring citizenship "by operation of law" under art. 14(1)(b) of the Federal Constitution. This disposes off the main issue in this case.

[10] Having perused the grounds of judgment of the learned High Court Judge and considered the submission of the party before us, we found no reason to depart from the decision of the learned High Court Judge. With due respect to learned counsel for the appellants, we found the wording of s. 1(b) of Part II of the Second Schedule is very clear. It talks about every person born outside the Federation "whose father as at the time of the birth a citizen." The emphasis is "at the time of the child's birth." With due respect to learned counsel of the appellants, the legitimacy of the child under ss. 3 and 4 of the LA 1961 cannot be retrospective as s. 4 of the same clearly states that the child is rendered legitimate "from the prescribed date or from the date of the marriage, whichever is the later". It means the child is only.

[11] deemed legitimate on the date of the marriage of his parents and not from the date of his birth.

Madhuvita v. Chan Tai Ern

[33] There were, thus, two conflicting decisions of the Court of Appeal on this point. At the time of the hearing of these applications, I was informed by counsel that *Chan Tai Ern* was on appeal to the Federal Court but had yet to be heard. I, therefore, did not have the benefit of the Federal Court's judgment when deciding the matter.

A Decision

[34] After due consideration, I followed the precedent set by the Court of Appeal in *Madhuvita*. I found the rationale there, which I have already set out above, more persuasive and adopted that view that the Applicants, having been legitimated, were Malaysian citizens by operation of law.

B [35] For the above reasons, I allowed the Applicants' respective applications.

[21] Turning now to Appeal 191, the learned judge of the High Court premised his ruling in favour of the respondent (Mohanasengri) on the following grounds. The judge said:

C Latar belakang

[2] Plaintif adalah anak kepada Mohan Rao a/l S. Daliah (bapa), seorang warganegara Malaysia dan Navamoney a/p P. S. Karuppiah (ibu) seorang warganegara Singapura. Semasa Plaintif dilahirkan ibu bapa Plaintif tidak
D berkahwin. Plaintif dilahirkan di luar pernikahan (out of wedlock) pada 09.11.1992 (Ekshibit "MS-1"). Namun, ibu bapa Plaintif kemudiannya telah mengesahkan dan mendaftar perkahwinan mereka mengikut undang-undang Negara ini (Law Reform (Marriage and Divorce) Act, 1976) pada 24.04.2006 (Ekshibit "MS-4").

E ...

Persoalan/Isu

[4] Isu utama untuk diputuskan adalah: "Sama ada status seorang kanak-kanak bagi tujuan Perkara 14(1)(b) Perlembagaan Persekutuan diputuskan pada masa kelahiran (at the time of the birth) atau pada masa
F permohonan bagi kerakyatan dibuat (at the time of the application of citizenship)"

Keputusan Mahkamah

[5] Pada 29.03.2021, setelah meneliti keseluruhan kertas kausa yang berkenaan dan setelah menimbang hujahan bertulis yang dikemukakan
G oleh peguam Plaintif (pada ketika itu) dan Hujahan Balasan Peguam Kanan Persekutuan (PKP) terpelajar, saya memutuskan Plaintif berjaya dalam permohonan beliau.

[6] Dengan hormatnya, saya tidak dapat bersetuju dengan hujahan Peguam Kanan Persekutuan terpelajar bahawa Perlembagaan Persekutuan
H Negara kita menghalang seorang kanak-kanak luar nikah dari ibu bukan warganegara untuk mendapat kerakyatan melalui operasi undang-undang.

[7] Pada masa permohonan Plaintif didengar dan diputuskan, terdapat dua (2) Mahkamah Rayuan Malaysia yang diketengahkan dan dirujuk kepada Mahkamah ini yang melibatkan isu yang serupa/sama dengan kes di hadapan Mahkamah ini iaitu, kes *Madhuvita Janjara Augustin (Suing*
I *Through Next Friend, Margeret Louisa Tan) v. Augustin Lourdsamy & Ors* [2018] 4 CLJ 758 dan *Chan Tai Ern Bermillo & Anor v. Ketua Pengarah Pendaftaran Negara, Malaysia & Ors* [2020] 4 CLJ 579.

[8] Setelah menimbang kedua-dua kes tersebut, saya lebih bersetuju dengan dapatan undang-undang dan keputusan bagi kes *Madhuvita Janjara Augustin* (*supra*). Pada hemat saya, status seorang kanak kanak bagi tujuan Perkara 14(1)(b) PP seharusnya diputuskan pada masa permohonan bagi kerakyatan dibuat dan bukannya semasa kelahiran beliau. Atas alasan di atas, permohonan Plaintif dibenarkan.

Kedudukan Undang-Undang terkini

[9] Namun, berdasarkan kepada keputusan terkini oleh Mahkamah Persekutuan dalam kes Civil Appeal No: 01(i)-34-10/2019(W) bagi rayuan kes *Chan Tai Ern Bermillo* (*supra*) yang membenarkan rayuan oleh Kerajaan pada 28.05.2021 di mana YAA Rohana Binti Yusof PMR, memutuskan:

> [3] All decided and reported cases on this issue are decisions of the High Court and the Court of Appeal. These decisions are in chorus (except for one decision of the COA in *Madhuvita*) in deciding that legitimisation of a Child after his birth precludes him from being a citizen by operation of law under art. 14 of the FC. This is because the provisions of the FC are clear that citizenship by operation of law must be determined at his birth, not after that. Section 17 clearly states that for an legitimate Child he is to follow the citizenship of his mother which was presumed he had obtained because he was travelling on the passport issued by the Government of the Philippines and in this case that of the Philippines. It is not the function of the Court to change that clear terms of the FC because the power to amend the FC lies in the Parliament, pursuant to Art 159 of the FC and in adherence to the doctrine of separation of powers.

[10] Oleh kerana Mahkamah Persekutuan telah memutuskan bahawa kelayakan mendapatkan kerakyatan bagi seorang kanak-kanak adalah bergantung kepada taraf/status kanak-kanak tersebut semasa kelahiran dan bukan semasa permohonan kewarganegaraan, saya dengan hormatnya pulangkan kepada Mahkamah Rayuan yang mendengar rayuan ini untuk membuat keputusan yang sewajarnya bagi rayuan ini, berdasarkan prinsip *stare decisis*, memandangkan fakta dan isu kes kita ini adalah sama dengan kes *Chan Tai Ern Bermillo*.

Federal Constitution

[22] The provisions of the FC that are relevant in regard to the question of citizenship by operation of law are as follows:

Article. 14(1)(b)

Article 14. Citizenship by operation of law.

(1) Subject to the provisions of this Part, the following persons are citizens by operation of law, that is to say:

(a) every person born before Malaysia Day who is a citizen of the Federation by virtue of the provisions contained in Part I of the Second Schedule; and

A (b) every person born on or after Malaysia Day, and having any of the qualifications specified in Part II of the Second Schedule.

Section 1(a) and (e) Part II, Second Schedule of the Federal Constitution

(a) every person born within the Federation of whose parents one at least is at time of the birth either a citizen or permanently resident
B in the Federation;

(e) every person born within the Federation who is not born a citizen of any country otherwise than by virtue of this paragraph.

Article 31 of the Federal Constitution

C **Article 31. Application of Second Schedule.**

Until Parliament otherwise provides, the supplementary provisions contained in Part III of the Second Schedule shall have effect for the purposes of this Part.

Section 17 Part III, Second Schedule of the Federal Constitution

D

17. For the purposes of Part III of this Constitution references to a person's father or to his parent, or to one of his parents, are in relation to a person who is illegitimate to be construed as references to his mother, and accordingly section 19 of this Schedule shall not apply to such a person.

E

The Issue

[23] Hence, the question is whether the subsequent marriage of the parents of the respective respondents in the appeals before us clothes them with the requisite qualification at the time of their application for citizenship so that
F they may be declared as citizens of Malaysia by operation of law. In *Madhuvita*, the Court of Appeal posited that it is the status of the applicant at the time of the application for citizenship and not the illegitimate status at the time of birth, which is germane.

[24] It may be noted that in *Madhuvita*, there was no order of legitimacy
G under the Legitimacy Act 1961. At any rate, the Court of Appeal in that case enunciated that upon the subsequent marriage of the parents, the child's previous illegitimate status is no longer relevant for the purposes of determining whether that child is a citizen by operation of law per art. 14(1)(b) of the FC read with s. 1(a) Part II, Second Schedule of the FC.

H **[25]** The relevant parts of the Court of Appeal's judgment are found in paras. [62] to [68] of the judgment. For present purposes, the Court of Appeal's ruling is summarised and it reads (per CLJ report) as follows:

(4) The appellant was born of parents who were not married to each other at the time of her birth and was known as a child born out of wedlock.
I However, she was no longer illegitimate by reason of legitimation by the subsequent marriage of her parents. Their marriage had been properly solemnised and recognised under s. 3 of the Legitimacy Act 1961 ('the

Act'). With the clear terms of s. 4 of the Act, the appellant was rendered legitimate by the subsequent marriage of her parents. As a legitimate person, the appellant was entitled to rely on her father's citizenship. The appellant had properly made her claim for citizenship and this was an appropriate and suitable case for the grant of the declaratory order sought. The appellant had fulfilled the requirements of art. 14(1)(b) read with s. 1(a) of Part II of the Second Schedule of the FC.

A

B

Submissions

[26] In the present appeals, the learned Senior Federal Counsel ("SFC") on behalf of the Attorney General's Chambers ("AGC") contended that the High Court had misdirected itself in fact and in law in failing to take into account and to appreciate that based on art. 14(1)(b), art. 31 read together with ss. 1(a) and (e), Part II of the Second Schedule and s. 17, Part III of the Second Schedule of the FC, the respondents do not possess the requisite qualifications to acquire citizenship by operation of law.

C

[27] The SFC argued that in light of art. 14(1)(b) and s. 1(a), Part II of the Second Schedule of the FC, the concept of citizenship by operation of law is premised on a combination of both '*jus soli*' and '*jus sanguinis*' principles whereby citizenship of a person is traceable to the place of birth, namely Malaysia, as well as Malaysia citizenship of at least one of the person's parents (right of blood) at the time of the person's birth. (See: Court of Appeal's decision in *Pendaftar Besar Kelahiran Dan Kematian, Malaysia v. Pang Wee See & Anor* [2017] 7 CLJ 33; [2018] 2 MLRA 406; [2017] 3 MLJ 308; [2017] MLJU 390 (CA)).

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E

[28] According to the SFC, the Court of Appeal's decision in *Madhuvita* could no longer stand in light of the majority decision of the Federal Court in *CTEB*. Based on the Federal Court's majority decision in *CTEB*, it was contended that acquisition of citizenship by operation of law requires the fulfilment of the requisite conditions at the time of birth and not thereafter. The subsequent marriage of the parents did not change the birth status of the child as an illegitimate child.

F

G

[29] Further, it was argued by the SFC that the Legitimacy Act 1961 is not relevant in determining the citizenship of the child. There is no express provision under the Legitimacy Act 1961 to deem the legitimated child as having been born to a lawful parent at the time of birth for the purpose of his citizenship by operation of law. The Legitimacy Act 1961, being a subsidiary legislation *qua* the FC, could not be interpreted in such a way as to augment what appeared to be a perceived *lacuna* in the FC.

H

[30] The Legitimacy Act 1961 is not competent as a legal instrument to confer citizenship status to a legitimated child under art. 14(1)(b) read with s. (1)(a), Part II of the Second Schedule of the FC. As such, an illegitimate

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child born within the Federation shall inherit the citizenship of his biological mother pursuant to art. 31 and s. 17, Part III of the Second Schedule of the FC.

[31] The nub of the SFC's contention is that pursuant to art. 14(1)(b) and s. 1(a), Part II of the Second Schedule of the FC, in order to qualify for a citizenship by operation of law, these conditions have to be met namely:

(i) the child must be born on or after Malaysia Day;

(ii) the child was born within the Federation; and

(iii) the child's parents one at least is at the time of the birth either a citizen or permanently resident in the Federation.

[32] However, in case of an illegitimate person, those conditions shall be read differently and they shall be as follows:

(i) the child must be born on or after Malaysia Day;

(ii) the child was born within the Federation; and

(iii) the child's mother is at the time of the child's birth either a citizen or permanently resident in the Federation.

[33] The basis for the difference between an illegitimate person or otherwise could be found in art. 31 and s. 17, Part III of the Second Schedule of the FC. Article 31 which is placed under Part III of the FC reads:

> Until Parliament otherwise provides, **the supplementary provisions contained in Part III of the Second Schedule shall have effect for the purposes of this Part**. (emphasis added)

[34] Section 17, Part III of the Second Schedule reads:

> For the purposes of Part III of this Constitution **references** to a person's father or to his parent, or **to One Of His Parents**, are in relation to a person who is **illegitimate** to be construed as **references to his mother**, and accordingly section 19 of this Schedule shall not apply to such a person.
>
> (emphasis added)

[35] Relying on the provisions discussed above, the phrase in s. 1, Part II of the Second Schedule of the FC 'whose parents one at least' must be substituted with the word 'mother'. This was comprehensively discussed and determined by the Federal Court in *CTEB*, where it was held by the majority as follows:

> (1) The child in the present appeal was born outside the Federation, hence art. 14(1)(b) of the FC applied to him. *Article 14(1)(b) refers to the requisite qualifications specified in Part II of the Second Schedule. Under Part II of the Second Schedule*, s. 1 lists five situations to qualify for a citizenship pursuant to

art. 14 which are in s. 1(a) to (e). Section 1(b) Part II of the Second Schedule, *ipso facto*, calls into operation the provisions pertaining to citizenship under Part III. *Section 17 opens with the words 'For the purposes of Part III*.' Therefore, in whichever way one looks at it, *s. 17 could not be detached from s. 1(b). Ignoring the application of s. 17 would also render art. 31 of the FC as otiose*. (paras 38, 39 & 43)

(2) *Section 17 provides for reference to the 'father' of an illegitimate child to refer to his 'mother'*. The only clear meaning to be concluded therefore is that *the child's citizenship follows that of his mother*. There is nothing ambiguous about s. 17 to permit other rules of interpretation. *From the express distinction for parents or father of an illegitimate child in s. 17, it is obvious that the word 'parents' in the context of Part III of the FC must be construed to refer to lawful parents in a recognised marriage in the Federation*. This country never legally recognised unwedded parents. Proper distinctions have always been made in our legislation in order to differentiate between the status of 'parents' in a recognised marriage or otherwise. *Even under s. 13 of the Births and Deaths Registration Act 1957, the legislation makes a clear distinction between a father or mother of an illegitimate child. This connotes that 'parents' refers always to legally wedded parents, not to a biological father and mother*. (paras 44 & 45)

(3) *The relevant provisions relating to the citizenship by operation of law in the FC must be read as a whole and to be given a straightforward plain meaning. It is improper to interpret one provision of the FC in isolation from the others*. Especially so, when the clauses indeed are written to be subjected to the other. *To half read the provision by ignoring that s. 1 must be read 'Subject to the provisions of Part III' is to deny the clearly express terms of the FC*. The FC must always be considered as a whole so as to give effect to all its provisions. The fundamental rule in interpreting the FC or any written law is to give effect to the intention of the framers. The court could not insert or interpret new words into the FC. The court may only call in aid other canons of construction where the provisions are imprecise, protean, evocative or could reasonably bear more than one meaning. *Section 17 is plain and clear in its meaning. The court should not endeavour to achieve any fanciful meaning against the clear letter of the law*. (paras 46-48)

(emphasis added)

[36] On the other hand, the respondents relied mainly on the two findings of the Court of Appeal in *Madhuvita* namely:

(i) The legitimacy of the applicant should be questioned at the time of the consideration of his application and not some other point in time; and

(ii) It is the prevailing status of legitimacy or illegitimacy status of the applicant which should be the relevant consideration in such application.

[37] For ease of reference, the relevant excerpts of the Court of Appeal's decision in *Madhuvita* are hereby reproduced as follows:

A [61] The next consideration is whether the above conclusions are now qualified by the interpretation provisions in Part III of the Second Schedule. It is our respectful view that it is not. To recapitulate, s. 17 provides that in relation to a person who is illegitimate, a reference to that person's father or parent is to be construed as a reference to the person's mother. The reason why we say that s. 17 does not alter the above
B interpretation is because *s. 17 only applies to a person who is illegitimate. Section 17 is drafted in the present tense and it is the prevailing status of legitimacy or illegitimacy which is the relevant consideration*.

...

C [65] With the clear terms of s. 4, the appellant is rendered legitimate by the subsequent marriage of her parents and that legitimation is from the date of the marriage, that is, from 23 January 2006. *From the language and terms of s. 17, the appellant's legitimacy or illegitimacy is questioned at the time of the consideration of the application, and not some other point in time*.

D [66] As a legitimate person from 23 January 2006, *s. 17 does not apply*. Section 17 only applies where the person is illegitimate. *Since there is legitimation of the appellant, s 17 does not apply*. As a legitimate person, the appellant is entitled to rely on her father's citizenship in which case, the appellant has quite clearly fulfilled the requirements of art 14(1)(b) read with s 1(a) of Part II of the Second Schedule.

E (emphasis added)

[38] However, as conceded by counsel for all the respondents, the Court of Appeal's decision in *Madhuvita* could no longer stand in light of the majority decision of the Federal Court in *CTEB*. Thus, based on the majority decision of the Federal Court, citizenship by operation of law shall be
F determined at the time of birth and not thereafter. As such, acquisition of citizenship by operation of law requires the fulfilment of the requisite conditions at the time of birth and not thereafter. The subsequent marriage of the parents would not change the birth status of the child as an illegitimate child.

G **Our Decision**

[39] It is clear that the High Court in each of the OS application had relied on *Madhuvita* and ruled in favour of the applicants (respondents before us). At the material time, the decision of the Federal Court in *CTEB* had not been
H delivered. In *CTEB*, the Federal Court (by majority) clearly and unequivocally rejected the proposition that was established by the Court of Appeal in *Madhuvita* in regard to the role of the order made under the Legitimacy Act 1961 or the subsequent legitimation of marriage of the parents for purposes of determining the question whether a child has the requisite qualifications to attain citizenship by operation of law.

I

[40] In *CTEB*, Her Ladyship Rohana Yusuf PCA (speaking for the majority) said: A

> [63] The appellants' argument that the child's birth status has been altered by virtue of his legitimation *via* s. 4 of the Legitimacy Act and that his legitimacy status for the purpose of s. 17 of Part III of the Second Schedule is to be taken at the time of the application for citizenship, B *amounts to introducing words into the provision of the FC against the express wordings of art. 14(1)(b) read together with the Second Schedule*.
>
> [64] This has been the interpretation of these clauses on the laws on citizenship by operation of law, adopted in all the reported cases thus far *except* in the Court of Appeal case of *Madhuvita Janjara Augustin (Suing Through Next Friend, Margaret Louisa Tan) v. Augustin Lourdsamy & Ors* [2018] 4 CLJ 758; [2018] 1 MLJ 307 ("*Madhuvita*"). C
>
> [65] *Madhuvita parted ways from all the reported cases on the subject both in the High Court as well as the Court of Appeal* ... The Court of Appeal had granted citizenship by operation of law to an illegitimate child pursuant to art. 14(1)(b) read together with s. 1(a) and/or (e) of Part II of the Second Schedule of the FC. D
>
> [66] In arriving at its decision in *Madhuvita*, the Court of Appeal concluded that the word "parents" under art. 14(1)(b) read with s. 1(a) of Part II of the Second Schedule is not qualified by the word "lawful", "natural", "biological", "adopted", "surrogate" or any other description or adjective. E As such, it includes biological parents. The fact that her parents were not married at the time of her birth does not alter or diminish their capacities as her parents. Hence, it did not need to rely on the interpretation provision in s. 17 of Part III of the Second Schedule of the FC.
>
> [67] *Madhuvita* distinctly differed from all other decisions in respect of two mains issues: F
>
> (i) that the legitimacy or otherwise of a child is to be considered at the time of the application; and
>
> (ii) the word "parents" in s. 1(a) of Part II of the Second Schedule refers to the capacity of "parents" unqualified in any manner or form by G the word "lawful", "natural", "biological", "adopted" or even "surrogate", or any other description or adjective.
>
> [68] With respect, *I am not in agreement with Madhuvita in relation to the finding that the legitimacy or otherwise of a child is to be considered at the time of the application. The interpretation of the word "parents" given by Madhuvita had also gone against all the other authorities*. H The word "parents" in s. 1(a) is not defined in the FC. As such, we will have to rely on the plain and ordinary meaning of the word. *Black's Law Dictionary Abridged* (6th edn) (Centennial Edition 1891-1991) defines the word "parent" to mean "the lawful father or mother of a person". Therefore, *in defining the word "parents" in s. 1(a) giving a plain and ordinary meaning must refer to lawful parents. In the same light,* I *the word "father" in s. 1(b) must also refer to a father in a valid marriage*.

Grammatical Construction

[69] ...

[70] *Madhuvita* considered the time of the application as the determining point of time for the qualification of the acquisition of citizenship by operation of law and that the interpretation in s. 17 becomes inapplicable in interpreting the legitimacy status of a child who at the time of the application is legally legitimised ...

[71] I am not able to reconcile para. 62 of the grounds of judgment above as to *how a child born to unmarried parents is not illegitimate but yet he is a child born out of wedlock. If so, why do you then need to legitimise a child who is not illegitimate but born out of wedlock*.

[72] *The grammatical construction employed in the case defies the basic premise that citizenship by operation of law requires no application nor consideration to be exercised by the Government* as I have earlier alluded to. As rightly pointed out by learned author, Emeritus Professor Datuk Dr Shad Saleem Faruqi in his book '*Our Constitution*' (Sweet & Maxwell, Thomson Reuters 2019) at pp. 178 and 179 in respect of citizenship by operation of law:

> *Birth and descent:* This type of citizenship is also referred to as citizenship by operation of law. Its complex details are found in art. 14(1)(a) and the Second Schedule, Part 1. *It confers an automatic right of citizenship without oath and without any official discretion on the following categories of persons.*

[73] *The relevant point of time to determine the legitimacy or otherwise of a child as enunciated in Madhuvita contravenes the concept of jus soli and jus sanguinis*. This issue was articulated in the decision of the Court of Appeal in Pang Wee See, where Abang Iskandar JCA (as he then was) observed as follows:

> [29] In determining citizenship of a person, two concepts are commonly applied, namely the concept of jus soli and the concept of *jus sanguinis*. *Jus soli* which means 'right of the soil', and commonly referred to as birth right citizenship, is the right of anyone born in the territory of a state to nationality or citizenship. The determining factor being the place or territory where a person was born. *In the case of jus sanguinis, which in Latin means 'right of blood', is a principle of nationality law by which citizenship is not determined by place of birth but by having one or both parents who are citizens of the state*. Viewed from the context of these two concepts, we are of the considered opinion that art. 14(1)(b) read with s. 1(a), Part II, Second Schedule of the Federal Constitution is a provision which is anchored on the elements of both the concepts of *jus sanguinis* and of *jus soli*, whereby *citizenship of a person is traceable to the place of birth namely, Malaysia, as well as Malaysian citizenship of one of the person's parents (the right of blood) at the time of the person's birth, in order to be a Malaysian citizen by operation of law, under art. 14(1)(b) read with s. 1(a), Part II, Second Schedule of the Federal Constitution*.

[74] Learned counsel emphasised *when a statutory provision is drafted in the present tense, it is intended that a person's legal status is to be determined as at the present time when a right is asserted* (see *Minister of Public Works of the Government of the State of Kuwait v. Sir Frederick Snow and Partners* [1984] AC 426; *Maradana Mosque Board of Trustees v. Mahmud* [1966] 1 All ER 545; *Hamed v. R* [2012] 2 NZLR 305; *S. A. Venkataraman v. The State* [1958] AIR 107). Thus, by virtue of s. 4 of the Legitimacy Act, the child is not illegitimate at the time of his application for citizenship.

[75] *The grammatical construction suggested by learned counsel relying on all the cases cited above are out of context. These cases do not deal with matters relating to jus soli and jus sanguinis*. No doubt they are appropriate for the grammatical construction in their own context.

[76] Besides defying the basic premise that citizenship by operation of law requires no application, the grammatical construction suggested is wholly irrelevant for yet another reason. *Between the grammatical interpretation approach and the legislative history of the constitutional provisions, the latter outweighs the former. Legislative history plays an important role in interpreting and understanding the context of a constitutional provision* (see *JRI Resources Sdn Bhd v. Kuwait Finance House (Malaysia) Bhd; President Of Association Of Islamic Banking Institutions Malaysia & Anor (Interveners)* [2019] 5 CLJ 569; [2019] 3 MLJ 561).

(emphasis added)

[41] Obviously, before the decision of the Federal Court in *CTEB* was delivered, there were two conflicting decisions of the Court of Appeal, namely *Madhuvita* and *CTEB* (CA). However, that controversy or conflict has since been (somewhat) settled by the majority decision of the Federal Court in *CTEB* which had clearly and unequivocally posited that it is the legitimate or illegitimate status of the child "at the time of birth" that matters. Thus, the subsequent marriage of the illegitimate child's parents or the order of legitimacy under the Legitimacy Act 1961 are irrelevant.

[42] At the outset of the hearing of the appeals before us, we asked counsel whether in light of the Federal Court's decision in *CTEB*, *Madhuvita* is still good law. Counsel for all the parties said that *Madhuvita* has been overruled by the Federal Court in *CTEB* and *Madhuvita* is no longer good law in light of the pronouncement to the contrary by the Federal Court in *CTEB*. Of course, counsel for the respondents endeavoured to argue that despite the demise of the Court of Appeal's ruling in *Madhuvita*, there was still scope for the argument that the respondents in the appeals had the requisite qualifications for citizenship by operation of law.

[43] We were not convinced with the arguments that were made by counsel for the respondents in the respective appeals in their effort at getting around the *CTEB* ruling. Rather, we agreed with the SFC that this court is bound by the decision of the Federal Court in *CTEB*. As far as we were concerned, all

the three appeals have more or less the same set of facts *ie*, the respondents sought declaration of citizenship by operation of law under art. 14(1)(b) of the FC and they were illegitimate at the time of birth. Thereafter (in Appeals 321 and 322) they claimed legitimacy consequent upon the subsequent marriage of their parents *via* orders of legitimacy under the Legitimacy Act 1961.

[44] The decision of the High Courts in all the three appeals, is indisputably anchored on the Court of Appeal's decision in *Madhuvita* which ruled that the status of respondents' legitimacy is to be determined at the time of application for citizenship and not at the time of birth. But the Federal Court by majority in *CTEB* has rejected and overruled *Madhuvita*. Since counsel for the respondents agreed that *Madhuvita* is no more a good law, it is clear that the appeals have to be allowed because we are bound by *stare decisis ie*, the majority in *CTEB*.

[45] For completeness, we should add that we did not have the benefit of arguments, in regards to the effect of the later decision by the Federal Court in *CCH & Anor v. Pendaftar Besar Bagi Kelahiran Dan Kematian, Malaysia* [2022] 1 CLJ 1; [2021] MLJU 2321; [2022] 1 MLRA 185 (FC), ("*CCH*") where the Federal Court (speaking through the learned Chief Justice) in dealing with an appeal relating to a claim for Malaysian citizenship in respect of an abandoned child, referred to the "minority" decision in *CTEB* and said at [43] and [44] as follows:

> [43] Dato' Dr Cyrus Das referred us to the dissenting judgment of this court in *CTEB & Anor v. Ketua Pengarah Pendaftaran Negara, Malaysia & Ors* [2021] 6 CLJ 471; [2021] 4 MLJ 236 ("*CTEB*") where it was stated that Part III which contains enabling provisions is meant to aid or assist in the interpretation of Parts I and II, and not to qualify or conditionalise the application of Parts 1 and II to Part III. The dissenting judgment had commented on s. 19B of Part III, as follows:
>
> > [161] Both ss. 19A and 19B of Part III are constitutional presumptions as to births. Section 19A codifies in part the international principle of flag state jurisdiction and applies in relation to persons who are born on a vessel such that their birth there is attributed to the place of registration of the vessel. Section 19B applies in relation to children who are found abandoned in any given place such that the place of abandonment is treated as their place of birth and where their mother is also permanently resident there.
> >
> > [162] All the above sections, namely ss. 17, 19, 19A and 19B exist as supplementary or filler sections – so to speak – to supplement or to close any gaps or to resolve technicalities that may arise when the person's parents' identity is in issue or even if their own place of birth is in issue so long as that is a relevant question for the purposes of Part I or Part II respectively.

> [44] The principles of *jus soli* and *jus sanguinis* as well as the principles on how the FC was drafted to enable citizenship as broadly as possible while weeding out statelessness have been discussed in great length by the minority of this court in *CTEB* (*supra*). *We adopt the reasoning there as part of this judgment being the only other decision of the Federal Court apart from this one, to our knowledge, to have touched on this issue most recently*.
>
> (emphasis added)

[46] Thus, the important and imperative question is whether *Madhuvita* has been resurrected *via* paras. [43] and [44] in *CCH*. But as we said, we did not have the benefit of arguments on this aspect of the development of the law since *CTEB*. In our view, the question of whether *Madhuvita* has been resurrected *via CCH* or otherwise has to be finally and decisively resolved and determined by the Federal Court (hopefully) in the near future.

[47] For now, it is our view that based on the doctrine of *stare decisis*, the majority ruling in *CTEB* applies to the fact pattern presented in the instant appeals. As such, all the appeals are allowed and we set aside the decisions of the High Court in respect of each of the appeals. Consequently, the applications *via* each of the originating summons in the High Court are dismissed. We made no order as to costs (here and below).